NO. 80-180

IN THE

Supreme Court of the United States

October Term, 1980

W. C. McDANIEL, ET AL.,
Petitioners

v.

JOSE SANCHEZ, ET AL.,
Respondents

On Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

JOINT APPENDIX

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Petition for Certiorari filed August 6, 1980.

Certiorari granted October 14, 1980.

TABLE OF CONTENTS

Page

A. Items Reproduced In This Appendix:

(1) Relevant docket entries 1

(2) Transcript of December 10, 1979 hearing on the new county reapportionment plan prepared in response to trial court's order of October 2, 1979 .. 9

(3) Plaintiffs' Exhibit 1, December 10, 1979 hearing.. 77

(4) Plaintiff's Exhibit 2, December 10, 1979 hearing.. 78

B. Relevant opinions and orders reproduced at the indicated pages of the Petition For Writ Of Certiorari:

(1) The District Court's Memorandum and Order of October 2, 1979 finding a constitutionally impermissible numerical disparity between the four Kleberg County Commissioners precincts but finding no dilution of Mexican-American voting strength, and ordering that a new plan be prepared. A-1

(2) The District Court's Order, dated January 10, 1980, declaring the new reapportionment plan to be constitutionally acceptable, finding that the plan was court-ordered rather than legislative such that preclearance under Section 5 of the Voting Rights Act (42 U.S.C. 1973(c)) was not required, and directing that the 1980 primary and general elections be conducted thereunder. A-21

(3) The District Court's Order of January 29, 1980 noting that the Court had "filed an order implementing a new apportionment plan for the 1980 elections" and denying respondents' motion for injunction pending appeal. A-24

(4) Opinion Order of the United States Court of Appeals for the Fifth Circuit, dated April 14, 1980, declaring that because Kleberg County's reapportionment plan had not been precleared under Section 5 of the Voting Rights Act, the trial court erred in assessing the plan's constitutionality and in ordering it into effect. Reported at 615 F.2d 1023. ..... A-26

Page

(5) Notification from the Clerk of the United States Court of Appeals for the Fifth Circuit, dated April 25th, 1980, of the issuance on that date of the Court's Mandate. A-30

(6) Order of the District Court, dated April 30, 1980, denying respondents' motion to enjoin the conduct of the May 3, 1980 primary election of county commissioners in Kleberg County. A-31

(7) Letter from the Clerk of the United States Court of Appeals for the Fifth Circuit, dated May 12, 1980, advising that on that date petitioners' motion for rehearing and for rehearing en banc had been denied. A-33

(8) District Court's Order, dated June 20, 1980, directing petitioners to immediately begin Section 5 preclearance procedure with respect to the plan for reapportionment of the commissioners precincts of Kleberg County. A-34

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

C.A. No. C-78-11

JOSE SANCHEZ, ET AL.,
Plaintiffs

v.

W. C. McDANIEL, ET AL.,
Defendants

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1/26/78	1.	Complaint, filed. *CLASS ACTION*—(copy to the Attorney General of Texas, Governor of Texas/ns)
1/26/78	2.	Plaintiff's Motion for Preliminary Injunction, filed.
		* * * *
2/3/78		*HEARING on Plaintiffs' Motion for* Preliminary Injunction, entered. (ODC) Case called for hearing on Pltff's Motion for a Preliminary Injunction. Attys. present. Mr. Parmley, L. Javier Cavazos, Richard Hall, Nelson Sharpe and L. L. Villarreal. Statements of counsel. Pltffs. witnesses.

DATE	NR.	PROCEEDINGS
		Pltffs. rest. Defendants rest. Arguments of Counsel. Court denied Plaintiffs' Motion for Preliminary Injunction and set the case for *Docket call at 9:30 a.m. MARCH 27, 1978.* Hearing concluded.
		* * * *
2/9/78	23.	DEFENDANTS McDaniel, Diaz, Collins, Hubert Dreyer, Ware & Scarbrough's ANSWER, filed.
		* * * *
2/10/78	28.	Plaintiffs' Motion for withdrawal of appearance of Plaintiffs Daniel Garcia & Englantina Garcia, filed.
2/16/78	29.	MEMORANDUM AND ORDER, filed. (ODC) (a/n-ns) Motion for preliminary injunction is denied. Case is set for docket call on the 27th of March, 1978 at 9:30 a.m.
		* * * *
3/3/78	32.	Plaintiffs' Notice of appeal, filed. (Copy to Ct. of Appeals. /ns)
		* * * *
3/7/78	36.	ORDER denying Plaintiff's Motion for Injunction pending appeal, filed. (ODC) (a/n by copy /ns)
3/9/78	37.	ORDER granting Motion to dismiss of plaintiffs Daniel Garcia & Englantina Garcia, filed. (ODC) (a/n by copy /ns)
		* * * *

DATE	NR.	PROCEEDINGS
4/10/78	49.	C/copy of Judgment from Court of Appeals denying appellant's Motion for an expedited appeal & denying appellant's petition for injunction, pending appeal, filed. (Goldberg & Ainsworth)
		* * * *
6/13/78	53.	ORDER certifying Class Action, filed. (ODC) (a/n by copy /ns)
		* * * *
7/20/78	55.	Plaintiff's First Amended & Supplemental Complaint, filed.
		* * * *
8/8/78	57.	C/Copy of Order from Ct. of Appeals ordering that the appeal in this case is expedited and the Judgment of the District Court is *vacated* and *remanded* to the District Court for consideration of Injunctive and other appropriate relief, filed. (Judges Goldberg & Ainsworth)
		* * * *
10/30/78		*First day of Trial, entered. (ODC)* (BS) All attorneys present. Bob Parmley & M. Levine for Pltff. Hall for Deft. Case called for trial. Both sides announced ready. Plaintiff waived opening statement and offered into evidence all testimony and exhibits introduced at the prior Hearing. Plaintiff's witnesses. Trial not concluded. Court recessed until 9:00 a.m. October 31, 1978.

DATE	NR.	PROCEEDINGS
10/31/78		*Second day of trial, entered. (ODC)* (BS) Trial resumed before the court. Plaintiff's witnesses. Plaintiff rests. Defendant's witness. Defendant rests. Court granted deft. permission to re-open. Defendants' witness. Court directed Plaintiff and Defendant to file suggested Findings of Fact and Conclusions of Law on or before November 20, 1978. Trial concluded.
		* * * *
10/2/79	78.	MEMORANDUM & ORDER, filed. (ODC) Court certifies this to be a Class Action, having met the requirements under Rule 23(a)(b)(2). Court further finds that the present apportionment Plan for election of County Commissioners is unconstitutional. Defts. are directed to submit a new Proposed Plan by NOVEMBER 13, 1979, A *Hearing is set for DECEMBER 10, 1979 AT 9:00 A.M.* to determine validity of Proposed New Plan. Costs are taxed to defts. and Plaintiffs are awarded attorneys fees. A Hearing on attys. fees will be set at a later date. (a/n by copy /ns)
		* * * *
12/10/79		*HEARING held. (ODC) (PCC)* Hearing began before the Court to determine the validity of a proposed new Plan. Defendants' witnesses. Deft. rests. Plaintiff's witnesses. Plaintiff

DATE	NR.	PROCEEDINGS
		rests. Closing arguments. Court took matter under advisement. Hearing concluded.
		* * * *
12/17/79	81.	Memorandum of Points & Authorities in support of Plaintiff's request that the defendants' Plan be accepted contingent upon Sec. 5 preclearance with the issuance of an Injunction pending preclearance filed.
12/18/79	82.	Defendants' Brief in support of proposition that reapportionment Plan, if ordered into effect by the Court is a Court-ordered Plan rather than a Legislative Plan.
1/14/80	83.	ORDER Approving Reapportionment Plan submitted to Court for 1980 elections, filed. (ODC) 1980 Primary and General Elections should be Conducted under this plan. (a/n by copy /ns)
1/23/80	84.	Plaintiff's Motion for Injunction pending appeal from an Adverse decision filed on Jan. 14, 1980, filed.
		* * * *
1/23/80	86.	Plaintiff's Motion for convening a Three Judge Panel to review the applicability of Sec. 5 of the Voting Rights Act to the instant case, filed.
		* * * *
1/23/80	88.	Plaintiff's Notice of Appeal, filed.
		* * * *

DATE	NR.	PROCEEDINGS
1/29/80	90.	ORDER denying Plaintiff's Motion for injunction pending appeal, filed. (ODC) Court further rules that once a Notice of appeal is filed, jurisdiction over the case passes from the District Court to the Court of Appeals, therefore, this Court does not have jurisdiction to rule on Plaintiff's Motion for reconsideration & Motion to convene a Three-Judge Panel. (a/n by copy & Ct. of Appeals)
		* * * *
4/25/80	95.	Plaintiff's Motion for Temporary Injunction, filed.
4/28/80	96.	ORDER setting Hearing on Plaintiff's Motion for Temp. Injunction, filed. (ODC) Hearing on Pltff's Motion for Temp. Injunc., is set for APRIL 30, 1980 at 1:30 p.m. (a/n by telephone & by copy /ns/sa)
		* * * *
4/30/80		*HEARING in re; Plaintiff's Motion for Temporary Injunction. (ODC) (pcc)* Hearing began before the Court on Plaintiff's Motion for Temporary Injunction. Plaintiff stated they would rely on the testimony from the December 10, 1979 Hearing and also the Ruling from the 5th Circuit. Deft's Witnesses. Deft. rests. Arguments of Counsel. Court took matter under advisement. Hearing concluded.

DATE	NR.	PROCEEDINGS
4/30/80	99.	ORDER, filed. (ODC) Court concludes it should not enjoin the May 3, 1980 Primary election in Kleberg County. Plaintiff's Motion for temporary injunction is denied. Court orders that the Kleberg County Clerk is enjoined from announcing the winning candidates of the May 3rd primary election for County Commissioner in Precincts 1 & 3, and for Constable in Precincts 1, 3, & 4 until further order of this Court. (a/n by copy /ns)
5/13/80	100.	Plaintiff's Motion to require the defendants to begin the Section 5 Preclearance Procedure, filed.
		* * * *
6/16/80		*HEARING ON PLTFF'S MOTION TO REQUIRE DEFTS. TO BEGIN PRECLEARANCE PROCEDURES (ODC/pcc)* Case called for hearing on Pltff's Motion to Require Defts. to begin Section 5 preclearance procedure. Arguments of Counsel. Deft's witnesses. Both sides close. Arguments of Counsel. Court took matter under advisement. Hearing concluded.
6/20/80	105.	ORDER Requiring Defts to immediately begin Section 5 Preclearance Pursuant to 42 USC 1973c, filed. (ODC) (a/n by copy /sm)
		* * * *

DATE	NR.	PROCEEDINGS
9/24/80	113.	Defendant's Motion for Leave to include candidates' names on November 4 General Election Ballot, filed.
9/25/80	114.	ORDER granting Defendant's Motion for Leave to include candidates' names on November 4 General Election Ballot, filed. (ODC) Further ordered that if the Supreme Court denies deft's petition for Writ of Certiorari, then the results of the 1980 general election shall be void & of no force Or effect with respect to the election of commissioners of Precincts 1 & 3. (a/n by copy /ns)
9/26/80	115.	Defendant's Motion for Leave to Include Candidates for Constable on November 4 General Election Ballot, filed.
9/30/80	116.	ORDER granting Defendant's Motion for Leave to include candidates' names on November 4 General Election Ballot, filed. (ODC) Further ordered that if the Supreme Court denies deft's petition for Writ of Certiorari, then the results of the 1980 general election shall be void & of no force or effect with respect to the election of constable for Kleberg County. (a/n by copy /ns)

* * * *

[1]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

C.A. No. C-78-11

JOSE SANCHEZ, et al

vs.

W. C. McDANIEL, Ind. and in his official capacity as Kleberg County Judge, et al

REPORTER'S TRANSCRIPT OF PROCEEDINGS

* * * *

[2]

DECEMBER 10, 1979—MORNING SESSION

BEFORE: Honorable Owen D. Cox, Judge Presiding

THE COURT: The Court calls Civil Action 78-11, Jose Sanchez, et al, against W. C. McDaniel, Individually and in his official capacity as Kleberg County Judge and other members of the county officials.

This matter is called for a hearing to determine the validity of a proposed new plan that has been promulgated by the county officials with regard to the Kleberg County Commissioners' Court, precinct boundaries, and this involves a question of equal representation.

I assume, Mr. Hall, that you are the moving parties at this time.

MR. HALL: Yes, Your Honor. We have submitted to the Court a proposal for the reapportionment of the four commissioners' precincts and we have provided a copy, at the time we filed with the Court, we provided a

[3]

copy of the same information to Mr. Parmley and he has had an opportunity, I believe he told me, to review the figures and compare them with his own copy of the 1970 census.

We are prepared simply to offer some proof, if necessary, as to the methods by which the reapportionment was made, if the Court would like us to do so.

THE COURT: Mr. Parmley, I would like to hear from you at this time.

MR. PARMLEY: Your Honor, prior to starting the hearing, I would request that the Court clarify whether or not the purpose of this hearing is solely to examine the one-person/one-vote violations or whether it is also to examine the dilution of minority voting strength. Of course our position that the issue of dilution of minority voting strength has been vested solely in the Justice Department and the United States District Court sitting in Washington, D.C., pursuant to the Voting Rights Act of 1968.

THE COURT: Well, as I understood it, and the intention that the Court has at this time is just a hearing for determination of validity

[4]

of a new plan that has been developed.

MR. HALL: Your Honor, that is what we came prepared for and I don't agree with Mr. Parmley. This was a lawsuit which was filed in federal court alleging two causes of action. One was that there had been an unconstitutional dilution of the voting strength of certain minority residents of Kleberg County and the other was a claim for a reapportionment simply based on one-man/one-vote. We tried both issues on the merits. The Court found adversely to the Plaintiffs on the question of dilution of voting strength and that left only the question of a division or a reapportionment on the basis of one-man/one-vote. I do not agree that under those circumstances the United States Justice Department has exclusive jurisdiction over the question of dilution of voting strength, and so we have come only on the one-man/one-vote, which is what the Court ordered us to do.

THE COURT: Mr. Parmley.

MR. PARMLEY: Your Honor, I bring to the Court's attention the case of Wise v. Lipscomb.

[5]

It is a Supreme Court case in which the Supreme Court said a new reapportionment plan enacted by a state, including one purportedly adopted in response to invalidation of a prior plan by a federal court, will not be considered effective as law until it has been submitted and received clearance under Section 5. Either in those cir-

cumstances, until clearance has been obtained, should a Court address the constitutionality of the new measure. Based on that, Your Honor, we believe that the Court in this case can examine the one-person/one-vote violation, but Section 5 of the Voting Rights Act gives exclusive jurisdiction to the Justice Department to examine dilution of minority voting strength under Section 5.

THE COURT: Well, Mr. Hall, the officials of Kleberg County, as I understand it, have a new plan which they think is satisfactory to withstand attack on equal representation. This is a case that has been before the Court quite a while. I think it is still before the Court and the Court is ready to proceed at this time.

MR. PARMLEY: Your Honor, does that mean

[6]

that the Court is going to examine the issue of dilution of minority voting rights?

THE COURT: Well, I am going to let the—since you seem to take the position that you don't have to be here anyway, or you or the Plaintiff, I am going to go ahead and let the county, Kleberg County, go ahead and present whatever they wish to present at this time.

MR. PARMLEY: Your Honor, we plan, then, to present some evidence in relation to dilution of voting strength later in the hearing. I guess a decision will have to be made as to whether or not that can be submitted.

THE COURT: Well, I am going to go ahead with it and you will—are entitled to your objections, and if you

think I am wrong, then I am just wrong, but I think that this Court needs to go ahead with this matter at this time. It has been hanging fire and I don't think that the Plaintiffs are entitled to just sit back, if you think that they are not doing things right, you don't always have to come to the courthouse to tell people about it, and so I am going to go right ahead at

[7]

this point.

Mr. Hall, are you ready to proceed?

MR. HALL: Yes, Your Honor, and we will call Mr. Nash, or Dr. Nash, as our first witness.

THE COURT: All right.

ROBERT TAYLOR NASH,

having been first duly sworn upon his oath, testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q. Will you state your name, please.
A. Robert Taylor Nash.
Q. How are you employed?
A. By Texas A&I University, Kingsville, Texas.
Q. In what capacity?
A. Dean of the College of Business.
Q. All right, and—address you as Dr. Nash?

[8]

A. That will be fine.

Q. All right. Dr. Nash, you were asked, were you not, to do some work for Kleberg County in connection with determining the population of the various commissioners' precincts according to the 1970 census and in reapportioning the commissioners' precincts in such a manner that each precinct would have as nearly as possible the same population as each other precinct, is that correct?

A. That's correct.

Q. And will you tell the Court, just in your own words, how you went about compiling the information in preparing a plan that would divide the commissioners' precincts into four equally populated areas.

A. Took the 1970 census figures. In this 1970 census of housing the different blocks, blocks in blocks in Kingsville were broken down, given a population for each of these blocks. I took, also, the census figures for enumeration districts out of the City of Kingsville and one other bit of information we had is the King Ranch has two different population bases and each of these population bases are in different commissioners' precincts, and so we took the 1970 King Ranch

[9]

insurance records in order to determine the population on the King Ranch at that time and saw that—all the persons that resided on the King Ranch were either employed by the ranch or were members of a family of King Ranch employees, so they had records which would indicate population at that point in time.

Q. Those are the sources of information you used?

A. Those are the sources I used.

Q. Now, once you had accumulated information with respect to what the populations were of the various areas in the county, what did you do next?

A. At that time I broke the commissioners' precincts down into four separate precincts, or I broke the population down into four different precincts, and then assigned each one, by taking all the different population figures and coming up with a population base for each of the four precincts.

Q. Now, you first got your census information which included populations on a block-by-block basis in the City of Kingsville and the populations in the rest of the county, which is rural, were by enumeration districts, were they not?

A. That's correct.

Q. And I believe you told the Court that in some of

[10]

these enumeration districts, the King Ranch lies in some of them?

A. That's correct, in two of the enumeration districts.

Q. And in order to divide those enumeration districts by population, you went to the King Ranch and obtained its insurance records which reflect the number of people who actually resided in 1970, in the Laureles Division of the King Ranch and in the Santa Gertrudis Division of the King Ranch, is that correct?

A. That's correct, yes.

Q. And when you later broke down those divisions and broke them up, you used the Laureles Division and the Santa Gertrudis Division as parts of those enumeration districts, right?

A. Each of those two enumeration districts were

broken into two parts because the King Ranch employees versus the rest of the enumeration district resided in two different commissioners' precincts.

Q. All right, so turning to specifics, enumeration District No. 3 actually contains a part of the King Ranch, doesn't it?

A. I would have to check. Yes.

Q. And it also includes all of the Santa Gertrudis

[11]

Division, which is a geographical division of the King Ranch?

A. That's correct.

Q. And you found that the Santa Gertrudis Division of the King Ranch, according to 1970 insurance records had a population of 471?

A. That's correct.

Q. So you were able to divide Enumeration District 3 by taking that division with those 471 people out of Enumeration District 3, is that what you did?

A. That's exactly what I did.

Q. And you knew what the enumeration district had to begin with, so when you took 471 out, you knew what was left in that enumeration district?

A. That's correct.

Q. And that is the same thing that you did with respect to Enumeration District 2, Enumeration District 2 contained all of the Laureles Division of the King Ranch?

A. That's correct.

Q. And the Laureles Division, according to King Ranch records, in 1970, had a total population of 196 people?

A. That's correct.

Q. So you were able to split out the Laureles Division

[12]

and knew how many people that would leave and how many it would take out?

A. That's correct, yes.

Q. Now, once you had accumulated that basic information, then the next thing you did, as I understand it, was to decide what the population was by voting precinct, is that correct?

A. That's correct.

MR. HALL: Your Honor, Exhibit 2, we filed with the Court, is a breakdown of voting precincts according to the 1970 census.

THE WITNESS: Excuse me. Let me look at that again. I want to make one—that was based on the earlier voting precincts.

MR. HALL: All right. I misdescribed that in my pleading Your Honor. I believe I described that as the breakdown by voting precincts under the plan as revised and actually it is the breakdown of voting precincts by population according to 1970 census before any changes were made.

Q. (By Mr. Hall). Is that correct, Doctor?

A. That's correct. That is exactly right.

Q. So what you are telling the Court is that with the population information, you then went voting

[13]

precinct by voting precinct and computed the population of each voting precinct according to the 1970 census?

A. That's correct.

Q. All right, and you then divided those voting precincts among the four county commissioners' precincts to come up with an apportionment of population on an equal basis?

A. That's right, yes.

Q. Now, Dr. Nash, in order to do that, it was necessary for you to split a couple of the voting precincts as they were under the previous apportionment plan, is that correct?

A. That's correct. Initially I attempted to break the commissioners' precincts down according to existing voting precincts and the reason for that is that the individuals residing in the different precincts would be able to vote at the places in which they have previously voted, but that was not practical, and so we did break down then some existing precincts in order to come up with apportionment.

MR. HALL: All right. Your Honor, Exhibit 3 to the pleading we filed is a compilation of the various voting precincts that are within each commissioner's precinct

[14]

under the proposed plan and it does indicate those instances in which it was necessary for Dr. Nash to split a voting precinct in order to put the populations in equilibrium and I will ask him about those and how he did it.

Q. (By Mr. Hall) Dr. Nash, Commissioner's Precinct No. 1 reflects that it contains, I believe, six voting precincts and it includes Enumeration District No. 1 and part of Enumeration District No. 2, and, for example, one of the voting precincts that is in Commissioner's Precinct No. 1 is Voting Precinct No. 9, which you in-

dicate was split. Now, would you tell the Court how it was that you split that between Precinct 1 and Precinct 3 and how you knew that by the split that you made you put 484 people in Precinct 1 and 351 in Precinct 3.

A. By using the block-in-block population from the 1970 census, I was able to take each actual block inside the city limits and determine how many people resided in it, and so, by splitting them, I just took the number that resided in the blocks in what will now be Commissioner Precinct 1, was Voting Box 9, and that amounted to 484, so I actually just split the lines, and I did have a

[15]

count based on the 1970 census of this block-in-block, which was described in the census.

Q. So what you are telling the Judge is that you actually had a count of the number of people in each city block within Voting Precinct 9?

A. That's correct, yes.

Q. And you simply took enough city blocks and people out of Precinct 9 and put them—out of Precinct 1 and put them in Precinct No. 3 to make 351, you actually had a physical count according to the 1970 census?

A. That's correct, and tried to use as natural boundaries as possible, and in most instances, straight lines.

Q. All right, and is that how you determined the number of people in each voting precinct that was actually split between two commissioners' precincts?

A. That's correct.

Q. So you actually had the numbers from the 1970 block-by-block census?

A. Yes.

Q. Now, in a couple of instances you used enumeration districts and I think in only the two cases we have already mentioned did you split an enumeration

[16]

district, you split Enumeration District 2 between Commissioner's Precinct No. 1 and Commissioner's Precinct No. 4, is that correct?

A. That's correct.

Q. And in Precinct No. 4 you put only the Laureles Division, that geographic area of the King Ranch that contained 196 people?

A. Yes.

Q. And that left the balance, all of the remainder of Enumeration District No. 2, with its 793 population, in Precinct 1?

A. That's correct.

Q. And you followed the same procedure with Enumeration District 3, you left the Santa Gertrudis Division with its 471 population in Commissioner's Precinct 2 and you put all of the balance of that enumeration district in Commissioner's Precinct No. 3?

A. Yes, the remaining 435 in Commissioner's Precinct 3.

Q. All right. Now, Dr. Nash, when you got through with that and drew the boundary lines that are depicted on Exhibit No. 1 to the pleading which we filed, do you have the figure there that reflects the population of Commissioner's Precinct No. 1 as the lines were redrawn?

[17]

A. Yes, 8,305.

Q. What about Commissioner's Precinct 2?

A. 8,324.

Q. And Commissioner's Precinct No. 3?

A. 8,307.

Q. And Commissioner's Precinct No. 4?

A. 8,336.

Q. All right, and did that produce a variation from the largest to the smallest commissioner's precinct of only 31 people?

A. That's correct, 31 people.

Q. A variation, then, of less than one-half of one percent?

A. Yes.

Q. Dr. Nash, in drawing these boundary lines, did you have any occasion to take into account whether the people within the geographic areas you were working with were Anglo-American or Mexican-American or black, or take into account race or ethnic background at all?

A. I did not.

Q. Were you asked to do that?

A. No, I was not.

MR. HALL: Your Honor, we would offer as Exhibit 1, 2, and 3, the three exhibits that

[18]

are attached to the pleading that is filed with the Court entitled Defendant's Proposed Reapportionment of Kleberg County, Texas, and I don't know whether the Court would like me to mark those again or whether their inclusion in the Court's file already would be sufficient.

THE COURT: I think it would be sufficient. They are in the file, so there is no problem there, except you have an objection, I take it.

MR. PARMLEY: Your Honor, the only thing we would point out is that Exhibit 2, as counsel has pointed out, is the reflected statistics for the 1968 plan and these statistics don't support Exhibit 3, which are basically conclusions that one would assume arise from Exhibit 2.

THE COURT: I understand your objection. I am going to go ahead and admit the exhibits that have been offered. I will keep in mind your objection, but I want to be able to look at the whole picture.

MR. HALL: We have no further questions of the doctor.

[19]

CROSS EXAMINATION

BY MR. PARMLEY:

Q. Dr. Nash, my name is Bob Parmley. I am an attorney for Texas Rural Legal Aid and I am representing the Plaintiff in this case. I am going to ask you a few questions about how you came up with your plan. You mentioned earlier in preparing the plan that you had to split certain enumeration districts, is that correct?

A. No, not enumeration. Yes. I'm sorry. Yes, I did, I split two enumeration districts.

Q. Okay, and what were the enumeration districts that you split?

A. 2 and 3.

Q. And Enumeration District 2 was where the Laureles Division was moved from Precinct 1 to Precinct 4, is that correct? Is that what occurred in this split?

A. No, it was not moved. It was, I think, already in that. I think they were voting in that box at that time. I am not real sure whether they were voting in that box or not. It was not actually moved. It was just a breakdown for this particular plan.

Q. Well, statistically, you said you calculated the

[20]

enumeration district split for the Laureles Division of the King Ranch and the Santa Gertrudis Division based on insurance records, is that correct?

A. That's correct, yes.

Q. Do you have any personal knowledge of how the King Ranch insurance records for 1970 were compiled for the Laureles and Santa Gertrudis Divisions?

A. I do not.

Q. So statistically, the data you used for splitting Enumeration Districts 2 and 3 comes from information supplied you by third parties?

A. It came from information supplied me by Judge McDaniel.

Q. And you have no personal knowledge of the reliability of the statistical information given you?

A. I do not.

Q. Dr. Nash, in the process of drafting your proposed plan, did you ever order a census enumeration district split from the Bureau of the Census?

A. No.

Q. And why didn't you do that?

A. I wasn't aware that it could be done.

Q. Dr. Nash, do you believe that a census bureau

[21]

enumeration district split would be more reliable than the statistical insurance reports that you used that were compiled solely for insurance purposes?

A. If it could be done, I'm sure it would probably be more reliable.

Q. Referring back to Enumeration District 2, what was the total population in that district before the split?

A. 989.

Q. And Enumeration District 3?

A. 906.

Q. Dr. Nash, when were you notified by the Commissioners' Court that they wanted you to draft a redistricting plan?

A. I don't really know the date. It was probably two to three months ago.

Q. And how were you notified? Was it in writing or oral communication?

A. I think it was oral communication.

Q. And do you remember who notified you?

A. Judge McDaniel. Best I can recall, he asked me if I would provide for him a statistical consultant, the name of a statistical consultant, and I asked what the purpose of it was. I indicated that I

[22]

would be willing to do this for him.

Q. What instructions did you receive at the time of notification from Judge McDaniel in reference to drafting the new plan?

A. What—

Q. Instructions. Did he tell you at that time how he wanted the plan drafted, factors to be considered, or was that not discussed?

A. How he wanted?

Q. Yes, how the Commissioners' Court and the Commissioners' Court's instructions to you in drafting a plan.

A. They wanted it broken down on a one-person/one-vote basis and that was the extent of their input on how I would do it.

Q. Did he notify you of that at your initial meeting or discussion with him?

A. Probably not. I don't really recall. I don't recall. I think that I probably met the first time with the Commissioners' Court and this was the first time I actually had information as to exactly what they wanted.

Q. Okay, now, when you did meet with the Commissioners' Court, how long after your meeting with Judge McDaniel was that?

[23]

A. Well, I didn't actually meet with Judge McDaniel, I talked with him on the phone, and probably, if I can recall correctly, he might have contacted me on a Monday and I met with them on a Friday, I'm not sure, it may have been a Thursday, I'm not sure, but it was a few days.

Q. Okay, and at your meeting with the Commissioners'

Court, did you meet with the full court in a formal session?

A. I don't really know. I think it was a formal session. As a matter of fact—the best I recall, it was a formal session because they acted on some business prior to talking with me.

Q. Okay. Now, at that time, did the Commissioners' Court ask you to take into consideration certain geographical boundaries in drawing the precinct lines?

A. I'm sorry, but I am not following the exact question.

Q. When they asked you to come up with a new plan, did they give you an instruction that you should take into consideration certain geographical boundaries such as major thoroughfares, rivers, things like that?

A. No.

[24]

Q. And did they ask you to take into consideration previous county maintenance districts?

A. No.

Q. And did they ask you to take into consideration the ethnic balance of the individual precincts?

A. No.

Q. How soon after you met with the Commissioners' Court did you have another meeting with them?

A. I don't know. It was—I guess I probably met with the Court two or three times in a period of maybe six weeks. I don't recall the exact dates. I don't have the record of the exact dates.

Q. Well, was it a couple of weeks in between?

A. A week or two weeks, yes.

Q. Now, at your second meeting with the Commissioners' Court, what was the substance of the discussion at that meeting in reference to the drafting of the new plan?

A. I don't recall.

Q. Well, did you go to them at that time and say, "I have been working on the plan. Here is some of my ideas. What do you think about it"?

A. I never did ask them what they thought about it, and I think in each instance I talked with them a couple of times and gave them what I have done, but

[25]

I was not asking for their advice on how to go about doing it.

Q. And when you gave them what you had done, did they give you any feedback as to whether they wanted it done that way or another way?

A. They might have given some feedback, but nothing formal, no formal request or anything as to how they wanted it done.

Q. And did you have a third meeting with the Commissioners' Court or was it just two?

A. I think there were three meetings.

Q. What took place at the third meeting?

A. I presume I presented the final plan.

Q. And what discussion occurred at that time concerning the plan, either positive or negative criticism of the plan?

A. I don't really—I don't recall whether there was positive or negative criticism. That was a formal meeting.

I am sure their records would indicate what kind of comments were made.

Q. Well, did they ask you at that time to explain the plan you had drafted?

A. Oh, yes.

Q. And did they ask you to make any corrections at that time in the plan?

[26]

A. I think one correction. One of the commissioners had a justice of the peace in his particular district who had an office in the courthouse and they asked if I would draw the boundary around the courthouse, and since it didn't have any population in that particular block, then I did that.

Q. So you received at least one instruction on how to draw the plan from the Commissioners' Court, is that correct, which you followed?

A. That's correct. It had nothing to do with population, but it was just strictly to serve that commissioner's precinct.

Q. Think back. Do you think there were any other instructions that you received from the Commissioners' Court that affected the drafting of the proposed plan?

A. I would think not.

Q. Do you believe that racial factors in any way influenced the drafting of the proposed plan, either directly or indirectly?

A. From my standpoint, no. I did not even take it into consideration.

Q. Did any of the commissioners ever approach you and talk about the racial composition of the precinct lines as you proposed them?

[27]

A. No. I didn't see the commissioners, with the exception of the formal meetings.

Q. Did you have any informal conferences with Judge McDaniel other than the initial contact?

A. I did, yes.

Q. And how many of those conferences did you have, approximately?

A. One or two. I don't recall.

Q. Okay, approximately how far into the drafting of the plan was your second informal contact with Judge McDaniel?

A. I don't know if I had two informal contacts. Actually, all my contact was just to present to him what I had done to that point in time, so I don't recall.

Q. And what was his response when you would present what you had done?

A. His response was it was fine, that I was the one that was being paid to do it.

Q. Did he ever give you any suggestions on how to complete the part of the plan that you hadn't completed up to that point?

A. No.

Q. What factors convinced you to draw the redistricting plan in the manner in which you did?

[28]

A. Population.

Q. Of course there is a variety of ways that you could have equalized each of the county precincts to adjust the population. Was there anything else?

A. Well, I tried to use natural boundaries and tried to stay in the existing voting precincts as much as possible. I initially tried to break it down on existing voting precincts, just moving precincts, and the first time I came—the first time that I completed that, I think I came up with about three thousand population, so I saw right away that that was not practical, so my attempt was to remain as much as possible along existing voting precincts, to use natural boundaries and to take into consideration population and population only.

Q. Why did you decide to take election Precincts 3, 4 and most of 11 out of County Precinct 1 and put them in County Precinct 4?

A. That's the way it broke down.

Q. Well, it would be possible, wouldn't it, to move people from Precinct 2 into Precinct 4, rather than people from Precinct 1?

A. I would have to see the map and then give you some indication as to why I did it. It would be possible to move people from any one of the four

[29]

precincts into any other precinct, yes.

Q. So why did you move them from Precinct 1 to Precinct 4?

A. If I could see a map, then I would—okay, you are referring—I didn't actually have the existing precincts, so I was not trying to move from one to another. I didn't use the existing commissioners' precincts, I used only voting precincts, but so far as moving from one precinct—from one commissioner's precinct to another

commissioner's precinct, I was not concerned with that, only with respect to voting precincts.

Q. The Commissioners' Court and the commissioners individually did not give you any feedback as to how you may be, by your plan, adversely affecting their precincts that would have made you conscious of how you were shifting the county precinct lines?

A. I was probably conscious, but I didn't know what the precincts were. I was conscious if I did something that probably adversely affected them, but I didn't know how it adversely affected them or whether it was a positive effect. I was aware of some effects, but as far as them indicating whether or not I had made a change that was crippling to them, they just didn't do that.

[30]

Q. Were there any people in the community other than the commissioners and the county judge that approached you and made recommendations to you on how to draw this plan?

A. No. What do you mean, other than the county judge? I don't think that I indicated that the county judge gave me—would you mind restating your question?

Q. Well, I mean did you have any communication with anyone else other than the commissioners and the county judge in reference to this plan—

A. No.

Q. —where a person might have discussed with you how to draw it?

A. No.

Q. In the process of drafting the proposed plan, was a statement ever made to you concerning the ethnic composition of a precinct?

A. Not to my knowledge. I am pretty well—I am reasonably aware of the ethnic population in the community.

Q. Did anyone ever make a statement to you about how your proposed plan would ethnically affect voting rights?

A. No. If it did, I didn't take it into consideration

so I don't think that anyone did.

MR. PARMLEY: We pass the witness, Your Honor.

MR. HALL: No further questions, Your Honor.

THE COURT: You may step down.

MR. HALL: We call Judge W. C. McDaniel, Your Honor.

THE COURT: Counsel, this witness says that he is urgently needing to leave town. Is there anything further you want?

MR. PARMLEY: No, sir, That's fine.

THE COURT: So I can excuse him?

MR. PARMLEY: Yes, sir.

THE COURT: All right.

[32]

W. C. McDANIEL,

having been first duly sworn upon his oath, testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q. Would you state your name, please.

A. W. C. McDaniel.

Q. And, Judge McDaniel, how are you connected with Kleberg County officially?

A. I am County Judge of Kleberg County.

Q. How long have you been County Judge?

A. This is my ninth year.

Q. All right. Judge McDaniel, you have just heard Dr. Nash testify concerning the procedure by which he redrew commissioners' precinct lines in Kleberg County to equalize population between commissioners' precincts. Did the Commissioners' Court request Dr. Nash to make that study?

A. Yes, sir.

Q. All right, and Dr. Nash said that he was given no instructions with respect to achieving any particular ethnic balance or result in drawing these particular lines, that is he wasn't told to

[33]

put so many Mexican-American residents in one commissioner's precinct and so many in another and so forth;

did you give him any instructions to do anything of that sort?

A. I gave him instructions to take the 1970 census data and to draw four commissioners' precincts on a one-man/one-vote rule, as near as possible.

Q. All right. Now, he has told us how he went about it and he said that he came back and presented the information he had prepared to the Commissioners' Court, and among the items that we have filed with the Court is a map which is Exhibit 1 and that map is a map only of the City of Kingsville, but let me ask you, did the commissioners—were the commissioners presented with a map that broke the City of Kingsville into these four commissioners' precincts indicated on Exhibit 1?

A. Yes, they were.

Q. All right, and then the boundary lines of the commissioners' precincts proceed on generally out to the edge of the county in each of the four directions.

A. Yes, sir, they go out and join the original precinct boundaries, out to the end, where they extend out to the west and to the east.

[34]

Q. So with the exception of perhaps the Laureles and Santa Gertrudis Divisions, the boundary lines were changed only inside the City of Kingsville?

A. That's correct.

Q. And the boundary lines outside the City of Kingsville remain the same for the four commissioners' precincts?

A. Yes, sir.

Q. All right. Now, as far as this proposal is concerned,

after Dr. Nash prepared the reapportionment that would divide the population equally, did the Commissioners' Court sit down and look at the lines as he had drawn them to see what it did to the area within each commissioner's precinct and the number of roads and other items of that type that might fall within a given commissioner's duties as far as upkeep, maintenance, county government?

A. The only thing that was considered at the time that we were presented with this map was the population for each precinct. We were all interested in getting, as near as possible, to the one-man/one-vote, and, as Dr. Nash stated, the only consideration was the courthouse and keeping it in Precinct 1 because the existing

[35]

justice of the peace of Precinct 1 does have his office there, and since it involved nobody living in that particular block, we did keep the courthouse in Precinct 1, Commissioner's Precinct 1.

Q. All right. Well, other than the City of Kingsville, did the area served by each commissioner remain about the same?

A. Yes, sir.

Q. In other words, if you take Commissioner's Precinct 4 as shown in Exhibit 1, there are some changes in the boundary lines of that precinct within the City of Kingsville, but outside the City of Kingsville, the rural area remains the same?

A. Yes, sir.

Q. All right, and is that the same with 1, 2 and 3?

A. Yes, sir.

Q. And actually, under Texas law, the commissioners'

duties are confined largely to areas outside the City of Kingsville; you don't have that much authority inside the city, do you?

A. That's correct.

Q. You don't build roads and streets and sewers and that sort of things inside the incorporated city?

A. No, sir.

[36]

Q. All right. Dr. Nash said that he attempted, as nearly as possible, Judge McDaniel, to use the existing voting precincts. Is that important from the commissioners' point of view?

A. I don't see that it would be important from a commissioner's point of view. It would be important from the voting situation in an election to have each one vote in the voting precinct, to vote at one place. However, the way that he split the precincts, there would be no commissioners running at the same time from either one, so it will not make any difference insofar as an election is concerned.

Q. Actually, there is an election which was to be conducted in 1980, at least according to state law, for what commissioner's precinct?

A. That will be Commissioner's Precincts 3 and 1.

Q. All right. And, Judge McDaniel, let me ask you another question now. Dr. Nash said that he was provided with information concerning the 1970 population of the Laureles and Santa Gertrudis Divisions of the King Ranch. Did you obtain that?

A. We asked the King Ranch bookkeepers to search their records. I first talked with them and found that they did have a record on all of their employees.

[37]

The only people that lived in the Laureles and the Santa Gertrudis Divisions in 1970 were employed by the King Ranch and they had a complete record of all of these people.

Q. Did you know of any other source from which you might obtain that information?

A. No, sir.

Q. And did you provide that information then to Dr. Nash.

A. Yes, sir.

Q. And I believe, Judge McDaniel, that—well, let me ask you, did they tell you that the Laureles Division of the King Ranch had a population, according to their insurance records, of 196, back in 1970.

A. Yes, sir.

Q. And did they tell you that the Santa Gertrudis Division of the King Ranch had a population of 471 back in 1970?

A. Yes, sir.

Q. Now, again, just for the record, are there any incorporated towns or cities in Kleberg County other than Kingsville?

A. I believe that a portion of Corpus Christi extends down along part of the bay over here and that is—

[38]

no people concerned in it.

Q. All water?

A. Yes, sir.

Q. But as far as an incorporated town with residents

actually living there, Kingsville is the only one in Kleberg County?

A. Yes, sir.

Q. And just one other series of questions, Judge McDaniel, as far as the election is concerned, what is the first deadline for the 1980 elections? Let me ask you, have voter registration cards been sent out?

A. Yes, sir.

Q. And do those voter registration cards indicate voting precincts in which voters are to register?

A. Yes, sir.

Q. All right. Now, what is the next deadline in connection with the 1980 election in Kleberg County?

A. I believe that in filing for county offices, the filing begins January 5th is the earliest and then thirty days later is the deadline for filing for county offices.

Q. All right, and so far as county officials who will be affected by any reapportionment or redrawing of

[39]

county commissionner precinct lines is concerned, of course the two commissioners would be, would they not?

A. Yes, sir.

Q. Are they required to live within the precinct in which they run?

A. Yes, sir.

Q. All right, what about justices of the peace, are they also affected by where the commissioners' precinct lines are?

A. Yes, sir.

Q. Must they reside within the commisisoner's precinct in which they run?

A. Yes, sir.

Q. And how many justices of the peace, if you know, will have to file for and be elected in 1980?

A. I don't really know at this time. I am just not familiar at this time.

Q. Do you know if there is a justice of the peace in each one of the four commissioners' precincts?

A. Yes, sir.

Q. So at least two would be up for election?

A. Yes, sir.

Q. Judge McDaniel, after Dr. Nash presented this possible reapportionment to the Commissioners'

[40]

Court, did the Commissioners' Court look at it to see what it did with respect to population and what it did with respect to boundary lines?

A. Yes, sir.

Q. Did you all review it to decide whether it was something that you felt would be consistent with your duties as Commissioners' Court in governing the county?

A. I think that we all shared a common interest in examining it and we wanted to get just as close as possible to the equal voters in each precinct according to the '70 census, and on that basis is what each commissioner examined it and of course they were interested in knowing how much came out of their precinct or how much went into their precinct, they were interested in seeing that because until Dr. Nash brought the map down, none of the commissioners knew what was coming out of their precinct or what was going to be put in it.

Q. And did the commissioners agree to present this proposal to the Court?

A. Yes, sir, it was officially adopted at the Commissioners' Court meeting to be presented to the Court.

Q. And you will adopt it if the Court permits you to

[41]

do so?

A. Yes, sir.

MR. HALL: No further questions, Your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. PARMLEY:

Q. Judge McDaniel, do you have personal knowledge of how the King Ranch insurance reports for 1970 were compiled for the Laureles and Santa Gertrudis Divisions?

A. I don't have personal knowledge, no.

Q. And any knowledge you have, you received from a third party, is that correct?

A. I received from their bookkeeper, who kept the records, yes.

Q. And you have no personal knowledge as to the reliability of those records, do you?

THE COURT: An outfit like the King Ranch

[42]

is not going to doctor its records, Counsel.

MR. PARMLEY: Your Honor, my line of questioning has to do with basically who is included in these insurance records, do they include just full time employees, do they include part-time employees, do they include people on leave of absence, do they include their dependents? I have no idea what statistics were in these insurance reports. They weren't produced here today. So far as I know, they could solely mention the employees who were full time, which would be wholly inaccurate as far as the population count.

MR. HALL: Your Honor, I believe the testimony has been that these were reported to be people who live on the King Ranch, which is the exclusive property of the King Ranch.

THE COURT: I think it's satisfactory. The objection is overruled, Counsel.

Q. (By Mr. Parmley) Judge McDaniel, what consideration, if any, did the Commissioners' Court give to Plaintiffs' proposed Plan A and B?

A. I suppose you would say we looked at it.

Q. And after looking at it, what did the Commissioners' Court decide as far as what action to

[43]

take with reference to it?

A. I think we decided that if the Court told us to re-

district, we would redistrict ourselves rather than having Texas Rural Legal Aid come in and draw it for us.

Q. Do you believe that racial factors in any way influenced your decision to take that position?

A. No.

Q. If, as you state, Judge, that the sole purpose of the Commissioners' Court in drafting a new plan was to satisfy the one-person/one-vote requirement, why didn't the Commissioners' Court submit Plaintiffs' Plan A and B to Dr. Nash to examine as a starting point?

A. Because we wanted him to be on his own in drawing the plan, not be polluted by any other plans that might be presented.

Q. When you say polluted, in what respect do you mean polluted?

A. Well, his mind drawn on something else. When he is told to do something and you give him something to look at and he sees that, we want his mind fresh, where he could do it himself rather than be influenced by what somebody else had given him.

Q. Isn't it true, Judge McDaniel. that you didn't want

[44]

Dr. Nash to come up with a plan similar to Plaintiffs' Plan A and B?

A. I didn't tell him what plan to come up with, Mr. Parmley.

Q. But you didn't offer him Plaintiffs' Plan A and B to study, did you?

A. I didn't offer him a plan that I had drawn up, either.

Q. Judge McDaniel, do you believe that racial factors were a secondary consideration in any way in the drafting of the county's proposed redistricting plan?

A. No.

Q. Did any of the commissioners ever discuss with you formally or informally the racial results of the proposed redistricting plan by the county?

A. Oh, I suppose after the plan was adopted, it might have been talked about, not in a meeting or anything formal, after the plan was adopted, you would naturally know, by living in Kingsville and living in Kleberg County, where the population lives and what the makeup is, so I suppose you couldn't help but talk about it.

Q. Well, who did you talk about it with with reference to the ethnic results of the plan?

[45]

A. I don't remember.

Q. Well, briefly, what was the result of your conversation?

A. Mr. Parmley, I have so many conversations with the commissioners, that I can't remember everything I talk about with them.

Q. Judge McDaniel, would you say that the Commissioners' Court was somewhat delighted that the outer segment of the Barrio, which was in Precinct 1, was now shifted into the Barrio again?

A. I would not.

Q. When you say there was some discussion of the racial results of the plan after the plan had been drafted, were there any discussions prior to the drafting of the plan?

A. Mr. Parmley, what I am trying to do is be truthful to the Court, to the best of my knowledge, and I have discussed with you on numerous times the racial makeup of plans and you have discussed it with me. Never has any discussion been made on an ulterior motive.

Q. Well, Judge McDaniel, that's why I am pursuing this line of questions, because of the results of our discussion. Let me ask you that question again. Prior to the drafting of the plan, in the process

[46]

of drafting it, did you participate in any discussions with the Commissioners' Court as to the racial results of any proposed plan?

A. No, because we didn't know what plan he was going to make up until Mr. Nash brought it in to us.

Q. How many meetings did you have with Dr. Nash other than formal Commissioners' Court meetings?

A. Probably two, maybe three.

Q. When did the first one take place?

A. When I called him on the telephone.

Q. And what did you tell him at that time?

A. I asked him, as Dr. Nash stated awhile ago, if he knew of someone in the Accounting Department at Texas A & I University who would work on some statistics for us in drawing a one-man/one-vote according to the '70 census.

Q. And what was his response?

A. He said he could probably get someone and then he asked me how would we do it and I told him we would use the enumeration districts and census data; that he could meet, or the person, they would need to meet with

us, and he said, "I will be able to do that myself," and I said, "Fine, will you meet with us at our meeting that we are going to have in two or three days and we will discuss it."

[47]

Q. And when did you have your second meeting with Dr. Nash other than a formal Commissioners' Court meeting, approximately?

A. Oh, about a week later, I suppose.

Q. And what did you discuss with him at that time?

A. Well, he needed some maps and he showed—had a general knowledge of figures that he was working on and we just met for about five minutes.

Q. Did you make any recommendations to him at that time as to how to draft the plan?

A. I did not.

Q. And you said you had a third meeting with him.

A. When he finished.

Q. And this was other than the formal meeting of the Commissioners' Court?

A. Yes, he brought all the data in to me for me to present to the Court.

Q. And what was the substance of that meeting?

A. He showed me how he went about doing it and the enumeration districts, he had a map of the county, and how he had gone block by block and showed me the figures which he had compiled.

Q. And did you give him any recommendations on possible changes to the plan at that time?

A. No, I did not.

[48]

Q. You didn't mention to him at that time that there was a JP for precinct 1 that was stationed at the courthouse and there would be a need to keep him in County Precinct 1?

A. Yes, I believe I previously testified I told him that.

Q. And did you tell him that at the third meeting you had with him?

A. We might have told him either at that meeting or at the Commissioners' Court meeting, I don't remember, but he was told that.

Q. Was there anything else you told him as far as drafting the plan, directions—

A. No, no directions.

Q. —on how to do it?

A. Uh-uh.

Q. Now, my understanding that the Commissioners' Court did not tell Dr. Nash to take into consideration geographical boundaries in drawing his plan, is that correct?

A. I think the only thing, thinking back, that I might have told Dr. Nash was to try to keep the voting precincts together as much as possible and to break as few as he could. That was probably the only thing that he was told.

[49]

Q. Was any mention made to try and preserve original county maintenance districts?

A. No.

Q. And you stated earlier the issue of the balance of the precincts was not discussed?

A. No, sir, it was not.

Q. Judge McDaniel, who was elected to the Commissioners' Court in the 1968 election?

A. '68?

Q. I'm sorry, 1978 election.

A. Commissioner Lomas.

Q. And one other commissioner?

A. Yes, Commissioner Collins was re-elected.

Q. And what county precinct is Commissioner Lomas from?

A. Four.

Q. And what county precinct is Commisioner Collins from?

A. Two.

Q. And you stated earlier that in the upcoming 1980 election, the offices for county commissioner for Precincts 3 and 1 are open?

A. That's correct.

Q. Judge McDaniel, did the 1980 election in any way influence the drafting of the county's proposed plan?

[50]

A. It did not, because we figured that after the 1980 census comes out, we will have to redistrict again.

Q. Well, my question is directed to since there were some changes in County Precincts 1 and 3, were those changes in any way influenced by the election that is going to take place in November of 1980?

A. They were not.

Q. I believe you testified earlier that certain election districts had to be split and that cards had already been mailed out to the individual voters. What was indicated on those cards as to where these voters would go to vote?

A. It just has the voting precinct number on it.

Q. So whether or not an election precinct has been split, do they go to their normal polling place within that election precinct, is that how it is going to work?

A. Yes.

Q. So the county hasn't, through their proposed plan, actually re-enumerated election precincts, they have simply split them and preserved the polling place to reduce the confusion among the voters?

A. That's correct. We figure that when we draw a new redistricting plan after the census, we will

[51]

probably have to redraw all the voting precincts anyway, so we will just re-do the whole county at the same time.

Q. Judge, did you testify earlier that you were not aware that you could get a population enumeration split from the United States Census Bureau?

A. I believe Dr. Nash testified to that.

Q. Well, were you aware of that possibility?

A. No, I wasn't.

Q. Judge McDaniel, you don't recall that in the trial of this case the Plaintiffs put on two plans in which enumeration district splits had been furnished by the Bureau of the Census?

A. No, I thought that you all did it yourselves. I didn't know the census bureau split it for you.

Q. So no effort whatsoever, to your knowledge, was made to contact the Census Department to try and get an enumeration district split from them?

A. That's correct.

MR. PARMLEY: Your Honor, we pass the witness.

MR. HALL: No further questions, Your Honor.

THE COURT: You may step down.

MR. HALL: We have no more testimony.

[52]

Your Honor.

MR. PARMLEY: Your Honor, we have one witness.

THE COURT: Do you have anything?

MR. PARMLEY: Yes, sir, we have one witness we would like to call.

THE COURT: All right.

MR. PARMLEY: Plaintiffs call to the stand Dr. Stan Bittinger.

THE COURT: All right. We will be in recess about fifteen minutes.

(Recess)

The COURT: I think you are the next witness.

MR. PARMLEY: Yes, Your Honor, we call Dr. Stanley Bittinger.

THE COURT: All right, Doctor, if you will come up here and be sworn and take your seat.

MR. PARMLEY: Your Honor, prior to introducing any testimony, we request that the Court incorporate all previous testimony in this case into this hearing.

[53]

THE COURT: Do you wish to furnish me with a written transcript of it?

MR. PARMLEY: Well, this incorporation by reference.

THE COURT: All right.

STANLEY BITTINGER,

having been first duly sworn upon his oath, testified as follow:

DIRECT EXAMINATION

BY MR. PARMLEY:

Q. Would you state your name, please.
A. Stanley Bittinger.
Q. Where are you presently living?
A. Kingsville.
Q. And by whom are you presently employed?
A. Texas A & I University.
Q. And what is your—

THE COURT: Has this witness been on the

[54]

stand before?

MR. PARMLEY: Yes, sir.

THE COURT: Well, I'm not going to take into account his prior testimony. You can't put him on the stand now and add to what you have already used him for and I am not going to go back and hunt notes and spend hours trying to figure out what he testified before, so you are just going to have to rely on his testimony before the Court at this time.

MR. PARMLEY: Yes, sir. Your Honor, if opposing counsel will agree to a stipulation of Dr. Bittinger's credentials as an expert, we can save the Court some time because we have previously gone through this.

MR. HALL: I don't know. As an expert what, Your Honor? I assume—I don't remember what Dr. Bittinger testified to last time, but I assume Dr. Bittinger is simply going to testify to some statistics, as Dr. Nash did.

MR. PARMLEY: That's correct.

MR. HALL: Well, I will stipulate, I guess, Your Honor, that he is an expert in working with numbers, if that is what counsel wants.

[55]

MR. PARMLEY: That's fine.

THE COURT: All right.

Q. (By Mr. Parmley) Dr. Bittinger, have you had an opportunity to review the 1968 Kleberg County apportionment plan?

A. Yes, sir.

Q. And in your review of the 1968 Kleberg County apportionment plan, did you study the ethnic breakdown precinct by precinct?

A. Yes, I did.

MR. PARMLEY: Have this marked Plaintiffs' Exhibit 1.

Q. (By Mr. Parmley) Dr. Bittinger, does this chart which is marked Plaintiffs' Exhibit No. 1 accurately reflect your statistical analysis of the 1968 Kleberg County apportionment plan as you testified prior in this hearing?

A. Yes, it does.

MR. PARMLEY: Your Honor, we would like to introduce in evidence Plaintiffs' Exhibit No. 1.

THE COURT: All right, it will be admitted.

Q. (By Mr. Parmley) Dr. Bittinger, have you had an opportunity to review the county's proposed redistricting plan which I believe is marked

[56]

Defendants' Exhibit A, using methods and data commonly used and accepted by scholars in your professional field?

A. Yes, I have.

Q. And in your review of the county's proposed redistricting plan, did you study the ethnic breakdown, precinct by precinct?

A. Yes, I did.

Q. And do you know approximately what the percentage of Mexican-Americans are in each of the proposed county precincts?

A. Yes, I do.

MR. PARMLEY: Could we get this marked Plaintiffs' Exhibit No. 2?

Q. (By Mr. Parmley) Dr. Bittinger, what is the percentage of Mexican-Americans in Precint No. 1 according to the county's proposed plan?

A. Mexican-Americans in Precinct 1, approximately twenty-four percent.

Q. And what is the percentage of Mexican-Americans in Precinct 2?

A. 38.5 percent.

Q. And the percentage of Mexican-Americans in Precinct No. 3?

A. 11 percent.

[57]

Q. And the percentage of Mexican-Americans in Precinct No. 4?

A. 91 percent.

Q. Dr. Bittinger, does Plaintiffs' Exhibit No. 2 accurately reflect your calculations concerning the ethnic distribution according to the county's proposed plan, precinct by precinct?

A. Yes, it does.

MR. PARMLEY: Your Honor, we would like to introduce in evidence Plaintiffs' Exhibit No. 2.

THE COURT: Any objection?

MR. HALL: Not at this time, Your Honor.

THE COURT: All right, it will be admitted.

Q. (By Mr. Parmley) Dr. Bittinger, in comparing the ethnic statistics between the 1968 apportionment plan and the proposed apportionment plan, what county precinct involves the largest shift of ethnic statistics?

A. Precinct 1 seems to have had a major change and Precinct 4 somewhat minor change.

Q. According to the 1968 apportionment plan, what was the ethnic composition for County Precinct No. 1?

A. In 1968, the '68 study, based on '70 census figures,

[58]

in Precinct 1, we had seventy-two—no, fifty-nine percent Anglos and now it is seventy-two percent Anglos, and we had forty percent Mexican-Americans and now it is twenty-four.

Q. And when you say and now it is twenty-four, you're referring to the proposed—

A. Under the new plan. Excuse me. Under the new plan, it would be twenty-four percent instead of forty percent as previously.

Q. What is the total net reduction of Mexican-Americans under the proposed plan in County Precinct 1 as compared to the 1968 plan?

A. About sixteen percent, something like that.

MR. PARMLEY: We pass the witness, Your Honor.

[59]

CROSS EXAMINATION

BY MR. HALL:

Q. Dr. Bittinger, have you actually looked at these two to see how much real difference there is between the two of them in terms of election results, for example?

A. I don't fully understand your question. I'm sorry.

Q. Well, you have presented the Court with simply a statistical tabulation of numbers of Mexican-Americans and Anglos by commissioners' precincts according to the 1970 census and the 1968 plan and the 1979 plan. What I am asking you is as a practical matter under either plan, in 1968, according to 1968 plan, or 1979 plan, you had a large majority of Mexican-Americans in Precinct No. 4, did you not?

A. Right, yes.

Q. And the only difference is that that large number has been decreased slightly in the 1979 plan, right?

A. In Precinct 4, yes.

Q. And a few more, four percent more Anglo voters have been put into Precinct No. 4?

A. That's right.

[60]

Q. So in terms of a change in the voting power or strength of the people, there is not a great deal of change there, is there?

A. Doesn't appear in that particular precinct there, no.

Q. Okay, there is not a great deal of change there. Let's go up to Precinct No. 3. Precinct No. 3, there is an increase of about eight percent in the Anglo and a

decrease of about seven percent in the Mexican-American. That doesn't really reflect any great shift in voting strength one way or the other?

A. Depends on what you mean by great. There is a slight shift. It depends on who is looking at it.

Q. But really it is not pronounced, you wouldn't call that a substantial change in terms of what the results were going to be, for example, if people voted along ethnic lines, would you?

A. Depends on the election. All I can say is that there is a change.

Q. Now, let's go up to Precinct No. 2. In Precinct No. 2, the 1979 plan decreases the number of Anglos in the precinct and increases the number of Mexican-Americans both by roughly eight or nine percent, doesn't it?

[61]

A. Yes.

Q. All right, so in Precinct No. 2, according to this plan the Court is considering right now, you actually have a large—not a large, but you have thirty-eight percent Mexican-American voters in Precinct No. 2, and let me ask you, Dr. Bittinger, as far as candidates in Precinct No. 2 are concerned, under this particular proposal, if you had two or three or four candidates who are running for commissioner in Precinct No. 2, they would all have to be concerned with how the Mexican-American residents of that precinct voted, wouldn't they, because the Mexican-American constituency in Precinct No. 2 is a substantial one?

A. Thirty-eight percent, yes.

Q. My question, though, is that if you have two or three or four who are running for commissioner in that precinct, none of those candidates could afford to ignore the Mexican-American voting strength, could they, could he?

A. No.

Q. All right, and as a practical matter, isn't that the same with Precinct No. 1, you have got twenty-four percent Mexican-American in Precinct No. 1,

[62]

according to this plan that the Court is considering right now, and if you have candidates who are competing for election from that precinct, when you have as many as twenty-four percent, almost one-fourth of the population Mexican-American, none of those candidates can afford to ignore the voting strength and desires of the Mexican-American voters, can they?

MR. PARMLEY: Your Honor, we object to that question. He is asking Dr. Bittinger to speculate on political consequences of—

THE COURT: Well, that's what you are asking for, isn't it, a difference in voting so you can exert more political influence, isn't that what you are asking?

MR. PARMLEY: Your Honor, we are simply presenting these statistics with reference to the ethnic breakdown.

THE COURT: Well, that is not your reason for being here, though, is it? Isn't it basically your position they

are not getting enough chance to vote, have an opportunity to effectively vote? Isn't that what you are really talking about?

MR. PARMLEY: That is one of the things

[63]

we are talking about, Your Honor.

THE COURT: Okay. That's all I wanted to know about that. I am going to listen to the doctor here.

Q. (By Mr. Hall) Basically the same situation, isn't it, Doctor, that you have in Precinct No. 2, not quite so pronounced, but when you have competing candidates for commissioner of Precinct No. 1 with twenty-four percent Mexican-American and four percent up, those candidates, if they want to get elected, cannot afford to ignore the wishes of the Mexican-American and the other four percent.

A. I am not speaking as a political person with great knowledge in politics, I am here just to testify about the numbers, but before there were forty percent, now there are twenty-four percent, so they can ignore them more than before if they wish to ignore them.

Q. Well, you are here as an expert in numbers, but as an expert in numbers, you would know that if you want to get elected, which depends on the number of votes you get, if you were running in Precinct No. 1, you, Stanley Bittinger, were running in Precinct No. 1, against three other candidates, for commissioner of the precinct, you couldn't afford to ignore

[64]

twenty-eight percent of the voting strength of that precinct, according to population, could you?

A. No.

Q. Did you analyze these two plans according to numbers of people as well, Dr. Bittinger?

A. You mean are these statistics, the percentages, based on numbers?

Q. Yes.

A. Actual persons in each block, yes.

Q. You could put the actual number of people alongside the percentages?

A. Yes, I guess I could.

Q. Would it be too much to ask you to just put the numbers alongside these percentages so the Court will know what we are talking about in terms of actual people as opposed to percentages?

A. I didn't bring all my figures. I can send those to you. I didn't bring them with me here to the stand.

Q. Well, the reason I asked, Dr. Bittinger, is because if you have got just two people and you move one of them, that is fifty percent, and sometimes percentages don't reflect all that there is to know about the demography of a particular area.

A. I understand the logic of your question.

[65]

Q. I understand you were just asked to give the percentages and not the numbers?

A. That's right.

Q. Are you telling us you don't have any of the numbers present?

A. I have a lot of data here. It would take a little while to find it, but I could eventually find it if you—

MR. HALL: Your Honor, I don't want to take the Court's time up on those now.

THE COURT: Doctor, I think you said a minute ago that you did have some that you don't have with you, or at least it would take a little time.

A. That's right.

THE COURT: So let's pass on to something else and then let the doctor, at his convenience, within the next few days, furnish the Court with that information. Can you do that?

A. Yes. I have been working on it for the past few days or so and I have stacks of papers with a calculator—

THE COURT: Well, I'm not trying to put you out, but if you could do that, it might

[66]

save the Court some time.

MR. HALL: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. PARMLEY:

Q. Dr. Bittinger, in your study of census data, do Anglos or Mexican-Americans generally have larger families?

A. Mexican-Americans, in South Texas, generally have larger families.

Q. So the 1970 census figures represent or actually show a number of Mexican-Americans that does not reflect on their voting strength in comparison to the Anglo figures here?

A. That's right, there would be larger percent of the Mexican-American population under fifteen.

MR. PARMLEY: Pass the witness, Your Honor.

[67]

RECROSS EXAMINATION

BY MR. HALL:

Q. Well, Dr. Bittinger, that would have been as of 1970. Now every one of those people is nine years older than would be the case in 1970, right?

A. We just have the 1970 figures to go on.

Q. I am not criticizing you, but I am saying that on the basis of the 1970 census, which is all anyone has to go on, unfortunately, all of these numbers that you have calculated, according to the 1979 plan, would include, if those people are even still there, which we don't know, but if they are still there, in all of those larger families that you're speaking of, anyone who was

within nine years of voting age, that was anyone who was nine years old, is now voting, so you would—

A. People keep having babies and if we were to go back and count these people, a lot of people in 1970 were ten, would now be married and have children.

Q. Well—

A. So it would increase the number of young people still.

Q. But all we are doing is going on the basis of the 1970 census, right?

[68]

A. Yes.

Q. Okay, and what I am asking is, for example, in Precinct No. 1, if you had twenty-four percent of the population Mexican-American, they are a lot more of that twenty-four percent now who are of voting age than there was back in 1970, right?

A. Possibly.

Q. Okay, and if the population has grown, you say people keep having babies, why, this twenty-four percent is probably larger than twenty-four percent now, isn't it?

A. If they are still in the community.

Q. Okay, but that was the hypothesis that was given you, so wouldn't your testimony to the Court be that among these Mexican-Americans who are living in these precincts, according to the 1979 plan, since it was formulated on the basis of the 1970 census, if we are asked to assume that everyone is still there who was there in 1970, more of the Mexican-Americans are of voting age and there is a larger percentage of Mexican-Americans in each one of these precincts because of the—

MR. PARMLEY: Your Honor, we would object to this line of questioning because it is speculative.

[69]

THE COURT: This whole thing is speculative, Counsel.

MR. PARMLEY: Well, there are some facts that are more reliable than others.

THE COURT: Okay, your objection is overruled.

Q. (By Mr. Hall) Well, Dr. Bittinger, I understood you to tell Mr. Parmley that a lot of these people were not of voting age in the Mexican-American populations you have indicated, right?

A. Yes.

Q. Now you were speaking on the basis of the 1970 census, weren't you?

A. Correct.

Q. And all I am asking you is that having taken those percentages, it would be true that there are many more Mexican-Americans among that twenty-four percent who were there in 1970 who are of voting age now than there were in 1970?

A. You have to assume a certain dynamic model when we deal with these census statistics, when we are doing a census analysis of any country over a period of time, unless we can establish that there has been a dramatic increase in the birth rate or decline in the birth rate or decline in the death rate. If we

[70]

assume the death rate and birth rate is approximately the same, then we study migration statistics and look at a town like Kingsville or Alice or Falfurrias, towns of similar demographic characteristics, as people reach voting age, there has been a tendency for those to leave the community and others to stay in the community and marry and have children, and you come in ten years later as a census tabulator, you find the same kind of demographic characteristics, you don't find a drastic increase in the number of voters because a lot of those—if they all stayed there, it would be different, but if you assume the same kind of migration characteristics you had earlier, then the picture would be roughly the same. Once we have some kind of indication, as I said, there has been a change in the birth rate or change in the death rate or change in the migration rate, you have to figure all those things in to get some kind of estimate of what it is like now as compared to what it was ten years ago.

Q. But your analysis didn't take into account any of them, did it? I mean you analyzed the '79 plan according to the 1970 census.

A. That was what I was asked to do, to see was the

[71]

equitable to have been introduced in 1970.

Q. And you assumed that everybody who was there in 1970 is still there in 1979, didn't you?

A. No, we assumed that the same kind of demographic characteristics are the same.

Q. You mean that in reaching these percentages that are on Plaintiffs' Exhibit 2, you didn't use the precise figures that are in the 1970 census?

A. Yes, I did, but according to the questions I was asked here, how many of these are now of voting age, and we were assuming that since we had no indication —we had some estimates of the population size of Kingsville now compared to what it was in '70. This indicates a relatively minor change, which indicates that a lot of young people are still migrating out, a lot of people are still having babies, and we have certain increase at the younger age and certain voting age people are migrating to places like Houston and Corpus Christi.

THE COURT: Let me ask one question. We are talking about a ten year period. Do you take into account any increase in the size of the community? Is Kingsville much larger or any larger than it was ten years ago? Seems to

[72]

me like, Dr. Bittinger, it is a bigger town than it used to be.

A. According to the estimates we get from the census, it shows a growth of about a thousand.

THE COURT: About a thousand?

A. So really not all that much.

THE COURT: So it really doesn't make that much difference?

A. No.

Q. (By Mr. Hall) Dr. Bittinger, what about where they are? Are you not only assuming that there is the same number of people there now as in 1970, but also that they are living in exactly the same place that they did before?

A. To do our statistics, we have to rely on the most accurate figures we have available.

Q. But you can answer that question yes or no, can't you?

A. It appears there is some housing development taking place in County Precinct 1, going south, but we have no—no one, neither Dr. Nash nor I, has any way of knowing exactly how many are there in Precinct 1.

Q. Let me try again, Doctor. Didn't you assume that the people who were there in 1970 are living today in the same places they lived in 1970?

[73]

A. By the nature of the facts, we had to do that.

Q. So your answer is yes?

A. Yes.

Q. And don't you know, as a matter of fact, that that is probably not the case?

A. Right.

Q. So what you are telling the Court is that your analysis in 1979 is based on 1970 figures?

A. Right.

Q. Although you know that the people are not all in the same block in which they were counted in 1970?

A. That's right.

Q. And when you told Mr. Parmley that the Mexican-American has a much larger family, of course you don't really know whether that's so in 1979, do you? You haven't seen any census statistics on that?

A. There have been a few studies in South Texas. That's why I said, before I answered his question, that in South Texas, in general, there have been some sample studies done in areas, in South Texas areas.

Q. But the census will give you precise figures on that?

A. That's right.

Q. And these percentages you are using to analyze the

[74]

1979 plan are based on the precise figures, not assumptions?

A. That's right.

Q. So as far as assuming on the basis of a larger number of children or a larger number of nonvoting members, you don't have any statistics on that at all?

A. Not for Kingsville.

MR. HALL: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. PARMLEY:

Q. Dr. Bittinger, the county's proposed redistricting plan, to the best of my understanding, maybe you can

correct me if your studies indicate otherwise, is simply a frozen picture of where people lived in 1970 and according to that picture, the county has redistricted their plan on a one-person/one vote basis, is that correct?

A. Yes.

[75]

Q. So all of these objections your counsel has to changes in the 1970 plan, which he questioned you in relation to ethnic statistics, would also apply in relation to statistics for one-person/one-vote; by that, I mean people have moved out, there have been changes in the community that would not be reflected in their plan as they propose it here today.

A. All the plans that I have examined have been based on the 1970 census.

MR. PARMLEY: No further questions, Your Honor.

THE COURT: That is the only accurate information you had?

A. That's right.

MR. HALL: I have no further questions.

THE COURT: You may step down.

MR. PARMLEY: Your Honor, we have no further witnesses to call.

THE COURT: All right. I would like to hear a little argument on this.

Would it be more convenient from counsel's standpoint, both of you, to just give me briefly, right now, what you rely on primarily as your particular position? Could that be done? I am

[76]

not asking for any extensive detailed argument because I have done some work on it, but I would like to hear briefly from both of you.

MR. PARMLEY: Yes, sir, I am prepared to give a brief outline.

THE COURT: Well, that's all I am asking for. Mr. Hall, are you?

MR. HALL: I am, Your Honor, though I am not armed with citations of cases because counsel has not filed any written objections or proposals with respect to the plan.

THE COURT: Well, I just want to get a handle on the respective positions, so I guess since you started, you are first.

MR. HALL: Fine. Your Honor, I don't understand the Plaintiffs to be making any challenge at all to the reapportionment in Kleberg County on the basis of the one-man/one-vote results which have been achieved by the plan which has been submitted. I don't understand there to be any question about the mathematics. I understand there is some challenge to the source of the information on the basis of which the Laureles and Santa

[77]

Gertrudis Divisions were split out of their respective enumeration districts, but I think under the federal rules, the Court is entitled to take into account the information on the basis and in the form in which it was presented and we think there is ample reason to give credence to the reports which were received from the King Ranch as to the residents on those divisions. We also think that even if there was a fifty percent error in figures, the deviation in the overall results obtained would not make the plan invalid although we are not suggesting there is any error at all.

Really, Your Honor, I think this brings us to the question that the Plaintiffs have raised now with respect to the Court's jurisdiction to consider and order this plan into effect. We have proceeded on the basis that this was a contested case in which the Plaintiffs have suggested at the outset that there has been a violation of the Plaintiffs' Fourteenth Amendment rights in connection with the making up of the commissioners' precincts. The Plaintiffs came to court in an effort to

[78]

prove that by showing that there has been discrimination against Mexican-Americans and that there has been a dilution of the Mexican-Americans' voting power in Kleberg County. After trial on the merits, the Court concluded that there had been no showing whatsoever of any Fourteenth Amendment violation and it is our position in the lawsuit, with the issue having been raised and with the Court having concluded that as of this time

there has been no dilution of the voting strength whatsoever, that the Commissioners' Court is not now required to take race or ethnics into account in drawing a new plan, which has been directed by the Court, and which is to rectify only the one-man/one-vote deviation that has previously existed.

Counsel's argument is that the Court can only direct a one-man/one vote plan and the Court has no authority on the question of dilution. Well, we don't think dilution is in the case at this juncture, but I think that—I don't know what counsel proposes, Your Honor. If it is that the Court can approve this plan tentatively, but the next step is

[79]

up to the Justice Department to review it, then it seems to me that that is tantamount to the Court's abdication of its position in the case, and simply asking the Justice Department, "What do we do now for a remedy?" I don't think that was ever contemplated by the Voters Rights Act or by the cases that have been decided by the Fifth Circuit. So far as I am concerned, the issue of voting is not before the Court. It has been resolved in the Defendants' favor. The only question is, does this plan satisfy the one-man/one-vote requirement, and we think that it does and there has been no successful challenge to that.

THE COURT: All right, Counsel.

MR. PARMLEY: Your Honor, Lister requires that the new plan be based on the 1970 census. We have testimony that's uncontroverted today that this plan is

not based on the 1970 census, even though the Defendants were capable of getting an enumeration district split, to that degree they have not met the requirements of Lister, which is the basis, I believe, of the Court's finding as far as the need for the—one of the bases for the need for

[80]

reapportionment.

Your Honor, assuming that the Court does adopt the Commissioners' Court plan as not in violation of the one-person/one-vote principle, the issue of dilution of minority voting rights must be examined according to the Voting Rights Act, and again I would remind the Court of what the United State Supreme Court said in the case of Wise v. Lipscomb, and that was the same case as cited by this Court in its order, and the Court in that case said, "A new reapportionment plan enacted by a state, including one purportedly adopted in response to invalidation of a prior plan by a federal court, will not be considered effective as law until it has been submitted and has received clearance under Section 5. Neither in those circumstances, until clearance has been obtained, should a Court address the constitutionality of the new measure."

Therefore, Your Honor, pursuant to Wise v. Lipscomb, the Plaintiffs move that the Defendants' plan not be found constitutional until it has received Section 5 preclearance, and further, Your Honor, the Plaintiffs move

[81]

that the February, 1980 filing deadline for offices based on the country commissioner precinct lines be enjoined

until such time as the county can get clearance through the Justice Department or the United States District Court sitting in Washington, D.C.

THE COURT: All right.

MR. HALL: I would like to reply just to two points, Your Honor. First of all, as far as the 1970 census argument, Counsel is telling the Court that the proposal we have submitted is not based on the 1970 census, and I assume that the reason for that is the splitting of the two enumeration districts involving the King Ranch. All that counsel has done, Your Honor, by way of showing that better information might have been available is to ask the witnesses whether an enumeration district split was obtained from the Bureau of the Census, but there isn't any evidence, Your Honor, before the Court, that such a thing could have been done. All he has asked is did you try to do this, and Dr. Nash said, "I didn't try to, and I don't know whether you could get one of those or not," so as far as

[82]

that question is concerned, one, it is true that the split was not made on the basis of the 1970 census itself, but I think the Court can find that this is reliable information and that in view of the result achieved by using that very logical split of those two enumeration districts, there is no shortcoming of the plan on that score.

As far as Wise versus Lipscomb is concerned, Your Honor, Counsel has said that Justice Department approval must be obtained in the case of a plan adopted by a legis-

lature or a governmental body and I am aware of cases that hold, Your Honor, that after the plan is completely prepared, approved and adopted and then the governmental unit goes to court and says, "We would like to do this," that that may be construed as the county's plan rather than the Court's plan, but the evidence here is that the county commissioners have not adopted any plan at all, they were directed to submit a format to the Court and the Court is free to review that plan, to make alterations if necessary, but it is the Court's prerogative to direct the plan be adopted, and I personally

[83]

don't think that that slight degree of difference ought to determine the results of such an important consideration as reapportionment, but that's what the Fifth Circuit may be headed toward, and all I am suggesting to the Court is that we have employed an expert witness, which I suppose could have been done by the Court, or by opposing counsel, we have submitted a proposal which was prepared by that expert witness without any direction or intervention by the Commissioners' Court other than to keep the commissioners' precincts in balance on a one-man/one vote basis, if the Court directs that that plan be put into effect, if the Court adopts it and says "This is our plan, we only have one more election, really, before the 1980 census is out, I want the county to adopt this plan," then as I see it, that is the Court's plan and the county, of course, will adopt it and we do not think that the clearance provisions of the Voters Rights Act apply in that case, and if the Court will recall, Judge McDaniel did not say, "We have adopted this plan," all he said was the

[84]

Commissioners' Court authorized the preparation of the plan as one means of redistricting the county. We don't think that the preclearance requirements of the Voters Rights Act apply.

THE COURT: All right.

MR. PARMLEY: Your Honor, if I may have just a moment here. As the Court quoted in its order in this case, quoting Wise v. Lipscomb, the Court stated, "When a federal court declares an existing apportionment scheme unconstitutional, it is appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan. The new plan, if forthcoming, will then be governing law unless it, too, is challenged and found to violate the Constitution." That's the plan of action this Court took into effect. The Commissioners' Court has submitted a plan for the Court to adopt. This Court has taken the position that it doesn't want to order and devise its

[85]

own plan, and I would remind the Court additionally that in the recent case heard in this courtroom of Arriola versus Harville, the Jim Wells redistricting case which went before a three-judge federal court, in their statement of findings of fact, they found that the 1974 redistricting plan in that case which was ordered by this Court

—I am quoting now, Paragraph 5 of the statement of facts, "The 1974 redistricting plan is a court-approved plan and not a court-devised one and must be submitted to the Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act."

Your Honor, we submit that the Court has allowed the legislative body, in this case the Commissioners' Court, to come up with their plan. They have come up with their plan and submitted it to the Court for adoption, as in the Jim Wells case, and as Wise v. Lipscomb pointed out, this Court now has to submit that plan to the Department of Justice for Section 5 preclearance and that the constitutionality of that plan should not be judged until such time as the Section 5 preclearance of that plan has

[86]

been accomplished.

THE COURT: All right, I have heard the arguments. We will be in recess. I don't know how soon I will be able to give you an answer, but it won't be long.

(Reporter's Affidavit Omitted)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

C.A. No. C-78-11

JOSE SANCHEZ, ET AL., Plaintiffs

vs.

W. C. McDANIEL, ET AL., Defendants

PLAINTIFFS' EXHIBIT "1"
HEARING ON PLAN 12/10/79

KLEBERG COUNTY STATISTICS
FOR 1968 APPORTIONMENT PLAN
ACCORDING TO 1970 CENSUS

Precinct #1	Anglo	59.69%
	Mex-Amer	40.41%
Precinct #2	Anglo	69.1%
	Mex-Amer	30.9%
Precinct #3	Anglo	68.0%
	Mex-Amer	18.4%
	Black	13.6%
Precinct #4	Anglo	4.3%
	Mex-Amer	95.7%

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

C.A. No. C-78-11

JOSE SANCHEZ, ET AL., Plaintiffs

vs.

W. C. McDANIEL, ET AL., Defendants

PLAINTIFFS' EXHIBIT "2"
HEARING ON PLAN 12/10/79

KLEBERG COUNTY STATISTICS
FOR PROPOSED 1979 PLAN
ACCORDING TO 1970 CENSUS

Precinct #1	Anglo	72.0%
	Mex-Amer	24.0%
	Other	4.0%
Precinct #2	Anglo	60.0%
	Mex-Amer	38.5%
	Other	1.5%
Precinct #3	Anglo	76.0%
	Mex-Amer	11.0%
	Black	12.8%
	Other	.2%
Precinct #4	Anglo	8.7%
	Mex-Amer	91%
	Other	.3%